

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**RALEIGH A. BLACK**  
Claimant

VS.

**CESSNA AIRCRAFT COMPANY**  
Respondent  
Self-Insured

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Docket No. 228,339

**ORDER**

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated May 6, 1998.

**ISSUES**

Did the Administrative Law Judge exceed her jurisdiction by ordering medical benefits, pursuant to K.S.A. 44-510?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Order entered by the Administrative Law Judge on May 6, 1998, is emphatic regarding respondent's lack of authority to interfere with the Court's orders, lack of authority to interfere with the authorized treating physician and lack of authority to deny authorized treatment as prescribed by the authorized treating physician. The frustration of the Court is apparent in its Order. To understand the Order of the Administrative Law Judge and the issue raised by respondent, a history of the proceedings in this matter must be considered.

Dr. Jay Stanley Jones was first authorized as the treating physician by the Court's Order of December 2, 1997. This authorization was for all treatment, but prohibited Dr. Jones' from making referrals to rehabilitation hospitals.

On December 22, 1997, claimant filed a motion for penalties. A hearing was held January 15, 1998, before Judge Barnes. At the hearing, it was noted that payment had been made to Dr. Abbas for certain treatment. However, this payment was made at the fee schedule rate and not at the rate billed by the doctor. The Court held the fee schedule payment was appropriate and further held claimant harmless for any balance due and owing. It was further discussed that a bill in the amount of \$800 for an MRI done at the request of an authorized physician had been paid, but paid late. The Administrative Law Judge ordered no penalties but admonished respondent to make payments in a timely fashion for authorized treatment.

In addition, a dispute existed regarding three prescriptions ordered by various treating physicians. The Court found that the three prescriptions were authorized as treatment stemming from the September 9, 1997, accident and ordered respondent to pay same. Again, no penalties were ordered.

Claimant filed a second motion requesting an order requiring respondent to cease and desist medical management. A preliminary hearing was held February 24, 1998, on that issue. Several disputes existed including respondent's objection to treatment for claimant's right hand and upper extremity, left knee and epididymitis. Claimant's objection at that time was that respondent was using a medical management team to supervise claimant's ongoing treatment. There was some concern that the medical management team was interfering or in some way objecting to treatment being ordered by Dr. Jones, who remained the treating physician. While the Administrative Law Judge did not prohibit respondent from using a medical management team, the Order issued on April 7, 1998, did admonish respondent to not unilaterally interfere with the Court's orders nor require Dr. Jones to seek their approval before he provided medical care to the claimant.

This matter again came before Judge Barnes on April 28, 1998, upon claimant's motion requesting respondent to cease and desist filing "notices of certification."

In workers' compensation litigation and in health care regulation, it is common for insurance companies to provide a "notice of certification" to the authorized treating physician as a form of authorization for the proposed treatment. There apparently was confusion in Dr. Jones' office regarding whether his right to provide treatment was being usurped or questioned by these notices of certification being issued by Kemper, the utilization management company providing respondent service in this file. Claimant objected to the use of these notices of certification alleging they were delaying or interfering with the treatment being provided by Dr. Jones. Respondent argued that the notice of certification procedure was utilized not only in workers' compensation, but by the entire health insurance industry as part of their medical management programs. In this

instance, the Court found that the notice of certification did not delay or prevent treatment for the claimant. The Administrative Law Judge did express concern whether future certifications may cause problems if respondent, for some reason, disagreed with the treatment proposed by Dr. Jones.

The Order issued by the Administrative Law Judge on May 6, 1998, again admonished the insurance carrier and respondent not to unilaterally interfere with the Court's orders, and continued Dr. Jones as the authorized treating physician with no requirement that he seek approval from the respondent to provide care for the claimant. The Order went on to admonish respondent's utilization management team that, while they have the right to review the prescribed treatment of the authorized treating physician, they may not delay or in any way interfere with the proposed treatment by the authorized physician. The Administrative Law Judge also admonished the parties that she was not interested in seeing them in her courtroom again unless a clear dispute regarding the medical treatment was before the Court with appropriate medical evidence supporting their positions.

The respondent, in its appeal from the May 6, 1998, Order, has alleged that the Administrative Law Judge exceeded her jurisdiction under K.S.A. 1997 Supp. 44-510. A review of the May 6, 1998, Order issued by the Administrative Law Judge fails to uncover any violations by the Administrative Law Judge of her authority. The Order merely admonishes the respondent and its utilization management team to not interfere with the treatment provided by the authorized treating physician. While respondent is granted the right to obtain information and to review the prescribed plan of treatment, they cannot, in any way, interfere with the authorization of the treating physician absent an order from the court modifying this treating doctor's authority.

The Order is nothing more than an administrative law judge's attempt to manage the medical treatment being provided to claimant with the least amount of interference or controversy. K.S.A. 1997 Supp. 44-534a grants the Administrative Law Judge the authority to decide the issue of medical treatment. The Appeals Board finds nothing in the Order of May 6, 1998, which exceeds the authority or jurisdiction of the Administrative Law Judge. Therefore, respondent's appeal under K.S.A. 1997 Supp. 44-551 should be dismissed as the Administrative Law Judge has not exceeded her jurisdiction in issuing the Order of May 6, 1998.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated May 6, 1998, remains in full force and effect, and the Appeal by the respondent should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

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BOARD MEMBER

c: Steven R. Wilson, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director